George Robinſon *and* Anne *his Wife, and* William Court, *an Infant*, - - } Appellants.

Grace Mercer *Widow*, John Mercer, *and* Joſeph, Mary, Jemima, James, *and* Elizabeth Mercer, *Infants*, - - } Reſpondents.

The Appellant's *CASE.*

JOHN MERCER, deceaſed, (the Reſpondent *Grace*'s Husband) and *Mary Kemyes*, in *July* 1712, having procured a Leaſe from the City of *Dublin* of Part of the *Strand* (ſince called *George*'s *Key* and *Mercer*'s *Dock*) for a Term of Lives renewable for ever, the ſaid *John Mercer*, by ſome Minute, in Conſideration of 450*l.* and by ſome other Writing, in Conſideration of 600*l.* aſſigned his Part or Moiety of the ſaid Premiſes to *William Alcock*, Eſq; deceaſed.

By Indentures of Leaſe and Releaſe, bearing date the 12th and 13th Days of *Dec.* 1712, the ſaid *John Mercer* conveyed all his Intereſt in the ſaid Premiſes to *Luke Gardiner*, Eſq; in Conſideration of 600*l.* and ſigned a Receipt on the Back of the ſaid Releaſe for the ſaid Sum; and *Gardiner*, by an Indorſement thereon, on the ſame Day declared the ſaid Money to be the Property of *William Alcock*, and that his the ſaid *Gardiner*'s Name therein was in Truſt only for the ſaid *William Alcock*.

On the 29th of *January* 1712, by Deed (reciting the ſaid Leaſe and Releaſe, and that the ſaid *Gardiner* had ſince purchaſed the other Moiety of the ſaid Premiſes from the ſaid *Mary Kemyes*) the ſaid *Gardiner* again declared the ſaid Leaſe and Releaſe to be in Truſt for the ſaid *William Alcock*, and by an Indorſement therein *Alcock* covenanted to pay the Rent, Duties, and Fines reſerved on the whole Premiſes.

By another Indorſement on the laſt mentioned Deed, dated the laſt Day of *February* 1714, the ſaid *Gardiner* granted and aſſigned *Alcock*'s Share or Part of the ſaid Premiſes unto him and his Heirs, and in Purſuance thereof the ſame Day gave him Livery of Seiſin.

Whereupon *Alcock* immediately granted Leaſes for Lives, renewable for ever, of the ſaid Premiſes unto ſeveral Perſons, the ſaid *Gardiner* joining with the ſaid *Alcock* in granting ſome of the ſaid Leaſes, and *Alcock* continued in Poſſeſſion until the Time of his Death, which happened in *January* 1717.

The Appellant *Anne* and *William Court* (the Appellant *Court*'s Father) being the Children and Heirs of two Siſters of the ſaid *Alcock*, both deceaſed, and being Heirs at Law of the ſaid *Alcock*, upon hearing of their Uncle's Death went over into *Ireland* in 1718, and as Heirs at Law of the ſaid *Alcock* exhibited two ſeveral Bills in the Court of *Exchequer* there, againſt *Patrick Lattin* and *Michael Moor*, and others, the Executors of the ſaid *Alcock*, for a Diſcovery of the ſaid *Alcock*'s Real and Perſonal Eſtates undiſpoſed of by his Will, and made the ſaid *Gardiner* a Party thereto.

Lattin and *Moor* put in Four inſufficient Anſwers, but thereby diſcovered that the Teſtator died ſeized of the ſaid Ground on *George*'s *Key*, and that the ſame was held by Leaſe for Three Lives, and that the Teſtator had not by his Will deviſed the ſame: And *Gardiner* by his Anſwer ſwore, that he and the Teſtator never had any Dealings in Partnerſhip, except in the Purchaſe of the ſaid Leaſe.

The Appellants, and the ſaid *William Court*, the Father, in 1719 exhibited another Bill in the ſaid Court of *Exchequer*, for Diſcovery on the Popery Acts, in the Name of one *Pearſon*, againſt the ſaid Executors, and made the ſaid *Gardiner* a Party.

Lattin and *Moore* jointly anſwered the ſaid Bill, and thereby *Lattin* referred to *Gardiner*'s Anſwer, and *Gardiner* ſwore he purchaſed in Partnerſhip with *William Alcock* the ſaid Ground on *George*'s *Key*, and declared Part thereof to be in Truſt for the ſaid *Alcock*, and the Reſidue to be for his own proper Uſe.

The ſaid *Anne* and *William Court* (the Father) being intitled to the ſaid Premiſes as ſpecial Occupants, the Court ordered the Deeds relating to the Premiſes to be brought into Court.

Whereupon

Whereupon *Lattin*, who (being a Papiſt) to evade the Laws, had got *Alcock* to purchaſe ſome Lands for him, and to ſecure ſuch Truſt, to give him a Statute or Bond of the Staple for 6000 *l.* ſet up the ſaid Statute as a Debt really due to him, and had the Premiſes on *George*'s *Key* extended, and got into the Poſſeſſion, the ſame being by the Inquiſition then taken, found to be the Eſtate of the ſaid *William Alcock*.

The Appellants were entire Strangers to the ſaid *Alcock*'s Affairs, having never ſeen *Ireland* till after his Death, and what Diſcoveries they made of his Effects, were only collected from the Anſwers above-mentioned, and from Hearſay; all the Deeds, Evidences, and Writings that belonged to the ſaid *Alcock*, or that might be of Service in making out the Appellants Title to the ſaid Premiſes, being in the ſaid Executors Hands, whereby they were brought under the greateſt Difficulties, until upon ſearching the Book of the Recognizor in the Court of *Chancery* in *Ireland*, they found an Entry of the ſaid Statute Staple for 6000 *l.* and on the next Leaf a Defeazance thereof entred at large.

Whereupon the Appellants filed a Bill in the ſaid Court of *Chancery*, to ſet aſide the ſaid Statute Staple, and to be let into the Poſſeſſion.

Lattin and *Moor* having anſwered, the ſaid Cauſe was heard the 21ſt Day of *May*, 1724, when the Court decreed the Appellants to the Poſſeſſion of the ſaid Premiſes, and ordered a perpetual Injunction to ſtay *Lattin*'s Proceedings on the ſaid Statute Staple.

Your Lordſhips Order, 12 Mar. 1724.

Lattin and *Moore* appealed from the ſaid Proceedings to your Lordſhips, and on the 12th of *March*, 1724, the ſame was heard; when your Lordſhips were pleaſed to diſmiſs the ſaid Appeal, and to affirm the ſeveral Proceedings complained of, and to order the then Appellants to pay 60 *l.* for Coſts.

Upon which the ſaid *Lattin*, in order to avoid the ſaid Decree ſo affirmed by your Lordſhips, inſtead of delivering up to the Appellants the Deeds and Writings he had in his Hands, relating to the ſaid Premiſes, was no ſooner returned to *Ireland*, but he gave the ſame to *William Butler*, the Reſpondents Attorney; and the Reſpondents thereupon, notwithſtanding they had Notice of the ſaid former Proceedings, on the

Reſpondents Bill filed, 15 May 1725.

15th of *May* 1725, (about two Months after your Lordſhips ſaid Order) filed a Bill in the ſaid Court of *Chancery* againſt the Appellants, making *Lattin* and *Gardiner* Parties thereto; thereby ſetting forth, That by Marriage Articles the ſaid *Mercer* covenanted, That if the Reſpondent *Grace* ſhould ſurvive him, and have Children then living he would leave all his Eſtates, Goods, and Chattels he ſhould die poſſeſſed of, to be divided amongſt them; and that though the ſaid *Mercer* had abſolutely conveyed the ſaid Premiſes to *Alcock* and *Gardiner*, yet no Conſideration Money was paid, for that the ſame was to be only a further Security for the Money the ſaid *Mercer* owed *Alcock* on a Mortgage of other Premiſes, and to ſcreen the ſaid *George*'s *Key* from the ſaid *Mercer*'s Creditors, and that *Alcock* or *Gardiner* did ſign a Defeazance in Writing, purporting that whenever *Mercer* paid what was due to *Alcock* on a fair Account, the ſaid Deeds ſhould be void, and therefore prayed an Account and Redemption.

Appellants Anſwer.

The Appellants *William Robinſon* and his Wife, and *William Court* the Father, anſwered the ſaid Bill, and inſiſted on the ſaid Deeds, being abſolute Conveyances, without Power of Redemption, and that they did not believe any Defeazance of the ſaid Deeds was ever executed by the ſaid *Alcock* and *Gardiner*.

Lattin's *Anſ.*

But *Lattin*, by his Anſwer, ſaid, That *Alcock* had declared to him, the ſaid Conveyances were only a Security for what *Mercer* owed, and that *Mercer* was to have the ſame upon paying what was due on a fair Account, and therefore the ſaid Premiſes being a Mortgage, would be Aſſets in his and the other Executors Hands.

Gardiner's *Anſwer.*

And *Gardiner*, notwithſtanding he had, ſince your Lordſhips ſaid Order, joined with the Appellants in Leaſing out Part of the ſaid Premiſes; yet by his Anſwer ſaid, That *he did not pay* the ſaid *Mercer* any Part of the ſaid 600 *l.* Conſideration, and believed the ſaid Deeds were only Securities for the Money due from *Mercer*.

Witneſſes having been examined, the ſaid Cauſe came on to be heard before the

Hearing, 9 May 1727.

preſent Lord Chancellor of *Ireland*, who was pleaſed, on the 9th Day of *May* 1727, to order and decree that the ſaid Deeds to *Alcock* and *Gardiner*, in Truſt for *Alcock*, ſhould only ſtand as Securities for the Money the ſaid *Alcock* had lent *Mercer*; and

and ordered an Account to be taken of what was made or might have been made of the Premiſes.

aring, Mar. 1727 The Appellants *Robinſon* and his Wife, and *William Court* the Father, thereupon applied for and had a Rehearing on the 21ſt Day of *March* 1727, when his Lordſhip was pleaſed to order and decree, That the ſaid Deeds executed by *Mercer* to *Alcock* and *Gardiner*, in Truſt for *Alcock*, ſhould ſtand only as Securities for the Money lent by the ſaid *Alcock* to *Mercer*, and that the Reſpondents were intitled to a Redemption of the Premiſes in the ſaid Deeds, and other the mortgaged Lands and Premiſes mentioned in the Bill, and ordered an Account to be taken of what was made or might have been made, of the Premiſes, without wilful Default; as alſo by whom the Rents and Profits of the Premiſes had been received ſince the Death of the ſaid *Alcock*; and on the Return of the Maſter's Report, an Order ſhould be made, in relation to the paying what ſhould appear to be due, and in relation to the reconveying the Premiſes.

Since the pronouncing the ſaid Decrees, the ſaid *William Court* (the Father) departed this Life; whereupon the Reſpondents, on the 15th of *Auguſt* laſt, revived the ſaid Cauſe againſt the Appellants.

ppeal. The Appellants conceiving themſelves much aggrieved by the ſaid two laſt mentioned Decrees (for that the Reſpondents, neither on the Hearing or Rehearing, produced or proved any Defeazance to have been executed, as alleaged by their Bill; and for that *Lattin* and *Gardiner* plainly appear to be concerned in the Event of the Cauſe, and conſequently ought not to have been read in Evidence, and for that the Appellants were not permitted to read ſeveral material Proofs) have appealed therefrom to your Lordſhips, and humbly hope your Lordſhips will reverſe the ſame as well for the foregoing as the following Reaſons.

I. *For that by the Reſpondents own ſhewing, the Articles related only to ſuch Eſtate as* Mercer *ſhould die poſſeſſed of, and no way affected any Eſtate he ſhould diſpoſe of in his Life-time.*

II. *For that the Reſpondents Caſe is attended with ſuch Circumſtances as do not deſerve Favour in a Court of Equity, they themſelves inſiſting, That the Conveyance was to defraud Creditors.*

III. *For that the Reſpondents, by their Bill, having pretended that* Alcock *or* Gardiner *executed a Defeazance in Writing declaring the Truſt, and the Appellants by their Anſwer having denied any ſuch Defeazance, it was incumbent on the Reſpondents to prove the ſame, which they have not done.*

IV. *For that to found a Decree upon parole Evidence of a Truſt, contrary to the Import of Deeds in Writing, is of dangerous Conſequence, and directly contrary to the Statute againſt Frauds and Perjuries* 7° Guliel. III. c. 12. *which enacts,* **That from and after the Feaſt Day of St.** John the Baptiſt, **which ſhall be in the Year of our Lord** 1696, **all Declarations or Creations of any Truſts or Confidences of any Lands, Tenements, or Hereditaments, ſhall be manifeſted and proved by ſome Writing ſigned by the Party who is by Law enabled to declare ſuch Truſt, or by his laſt Will in Writing, or elſe they ſhall be utterly void, and of none Effect.**

Wherefore the Appellants humbly hope that the ſaid ſeveral Proceedings complained of ſhall be Reverſed, and the Reſpondents Bill Diſmiſſed with Coſts; or that ſuch other Order ſhall be made for the Appellants Relief, as your Lordſhips, in your great Wiſdom, ſhall think fit.

P. YORKE.
C. TALBOT.

George Robinson *and* Anne *his Wife, and* William Court, *an Infant*, - - - - - - - } Appellants.

Grace Mercer, *Widow*, John Mercer, *and* Joseph, Mary, Jemima, James, *and* Elizabeth Mercer, *Infants*, - - - } Respondents

The Appellant's *CASE.*

To be heard at the Bar of the House of Lords, *on the* [illegible] *Day of* February, 1729.

George Robinſon *and* Anne *his*)